

NUTRITION SERVICES DIVISION MANAGEMENT BULLETIN		No. 00-212
TO:	Public and Private Agencies Participating in the Child and Adult Care Food Program	ISSUE DATE: February 2001
ATTENTION:	Agency Directors	
SUBJECT:	Public Law 106-224	
REFERENCE:	United States Department of Agriculture APB: CAC-00-13 and USDA Letter to State Agencies, October 17, 2000	

This Management Bulletin It is the **second of four** management bulletins that will transmit the recent changes to the federal law that authorizes the CACFP. It provides an overview of the changes to the procedures for terminations, appeals, and fund recovery within the Child and Adult Care Food Program (CACFP) that are the result of The Agricultural Risk Protection Act of 2000 (ARPA) or Public Law 106-224.

Terminations and Appeals

When a state agency determines that a CACFP institution is seriously deficient, the state agency must prescribe corrective action. If the institution successfully completes its corrective action, the seriously deficient designation will be removed. If it does not, the state agency must proceed with the termination of the institution's program agreement.

According to ARPA, the state agency must now issue a notice of intent to terminate prior to proceeding with the termination of the institution's program agreement. With the notice of intent, the institution has the right to a fair hearing through the administrative appeal process, as with the previous termination procedure. Unlike the prior procedure, however, the state agency **may not** withhold program payments to the institution during the appeal process. Payments will continue if appropriate records are maintained.

If the state agency decision is sustained, the institution's agreement will be terminated and reimbursement will cease. If, on the other hand, the institution's appeal is granted, the notice of intent will be invalidated and the seriously deficient designation will be withdrawn.

ARPA permits one exception to the above termination procedures. If the state agency determines that the enrolled children at an institution face imminent threat to their health or safety or that the institution's activities pose a threat to public health or safety, the state agency may immediately suspend the institution's program operation without the opportunity for corrective action. At the same time, the institution must be offered the right of appeal, although no program payments will be made during the appeal.

The termination of family day care homes from the CACFP must follow the same procedures that have been outlined above. That is, the home must be given the right of appeal prior to termination and program payments must continue during the appeal. As a result, the day care home provider must be issued a notice of intent to terminate, given adequate time to prepare an appeal, and have the opportunity to present a case before an independent and impartial appeal official. The provisions allowing an exception for an imminent threat to health and safety shall also apply to day care homes.

In forthcoming regulations, state agencies will receive standards for the termination of institutions and day care homes that engage in unlawful practices, falsify information, conceal criminal backgrounds, or fail to fulfill the terms of the program agreement.

Fund Recovery Procedures

A state agency may recover CACFP reimbursement that was improperly paid out as the result of program fraud or abuse or the submission of an invalid claim. With ARPA, an institution may now repay the money over a period of one or more years, at the discretion of the state agency. However, consistent with current practice, this repayment may not come from program reimbursement. The state agency may not initiate fund recovery before the institution is given a fair hearing through the appeal process.

If you have any questions, please contact John Copley, Program Analyst, Nutrition Program Management Unit, at (916) 323-6631, (800) 952-5609, or jcopley@cde.ca.gov.

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